

IOWA DEPARTMENT OF TRANSPORTATION PROPOSED DBE PROGRAM

(REVISED 1999)

The Iowa Department of Transportation will be holding a Public Hearing to discuss the New Proposed Disadvantaged Business Enterprise (DBE) Program for Federally Assisted Highway Construction Projects.

August 16, 1999
1:00 p.m. to 5:00 p.m.

Polk County Convention Center
Room 205
501 Grand
Des Moines, Iowa

For further information, contact the Office of Contracts, EEO Section, 515-239-1422.

All comments will be reviewed and considered if received in the Office of Contracts by the close of business on August 23, 1999. They can be left at the Public Hearing, or mailed to:

Office of Contracts, EEO Section
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

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IOWA DEPARTMENT OF TRANSPORTATION DBE PROGRAM

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR §26.5.

Objectives/Policy Statement

The Iowa Department of Transportation (Iowa DOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Iowa DOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Iowa DOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Iowa DOT to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to:

1. ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. ensure that the DBE Program is narrowly tailored in accordance with applicable laws;
4. ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. assist the development of firms that can compete successfully in the market place outside the DBE Program.

Mr. Roger Bierbaum Director of the Office of Contracts has been delegated as the DBE Liaison Officer. In that capacity, Mr. Bierbaum is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Iowa DOT in its financial assistance agreements with the Department of Transportation.

Iowa DOT has disseminated this policy statement to all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The statement is also published in the Des Moines Register.

Darrel Rensink, Director, Iowa DOT

Date

Nondiscrimination (§26.7)

The Iowa DOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE program, the Iowa DOT will not directly or through contractual or other arrangements use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (§26.21)

The Iowa DOT will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (§26.43)

The Iowa DOT does not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (§26.45)

We have designated the following individual as our DBE Liaison Officer:

Roger Bierbaum, Director of the Office of Contracts
Iowa DOT
800 Lincoln Way
Ames, Iowa 50010
515-239-1414
E-mail: roger.bierbaum@cloverleaf.net

In that capacity, Mr. Bierbaum is responsible for implementing all aspects of the DBE program and ensuring that the Iowa DOT complies with all provisions of 49 CFR Part 26. Mr. Bierbaum has direct, independent access to the Director of Transportation concerning DBE program matters.

External Civil Rights Section

Roger Bierbaum	Office Director, Office of Contracts
Vicki Dumdei	Assistant Office Director
Ron W. Otto	Civil Rights Administrator
Peg Muxfeldt	Secretary
Len Hill	DBE Specialist
Jim Kelly	DBE Specialist
Tomas Munoz	EEO/AA Officer
Craig Russell	Senior Engineer Tech.
Howard Reischauer	Senior Engineer Tech.

The DBE Liaison Officer is responsible for developing, implementing, and monitoring the DBE program, in coordination with the External Civil Rights Section. The External Civil Rights Section has the following duties and responsibilities:

1. Gather and report statistical data and other information as required by DOT.
2. Review third party contracts and purchase requisitions for compliance with this program.
3. Set overall annual goals.
4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements so that DBE goals are included in solicitations (both race neutral methods and contract specific goals) and monitor results.
6. Analyze Iowa DOT's progress toward goal attainment and identify ways to improve progress.
7. Participate in pre-bid meetings.
8. Advise the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provide DBEs with information and assistance in preparing bids, obtaining bonds and insurance.
11. Plan and participate in DBE training seminars.
12. Certify DBEs according to the criteria set by DOT and act as liaison to the Uniform Certification Process in Iowa
13. Provide outreach to DBEs and community organizations to advise them of opportunities.
14. Maintain the Iowa DOT updated directory on certified DBEs

Federal Financial Assistance Agreement Assurance (§26.13)

Iowa DOT has assigned the following assurance, applicable to all DOT-assisted contracts and their administration. This following language will appear in financial assistance agreements with sub-recipients.

The Iowa DOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Iowa DOT of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DBE Financial Institutions

It is the policy of the Iowa DOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have found no such institutions, but have made the following efforts to identify institutions that will work with the DBE community. To date we have identified the following such institutions:

West Bank of Des Moines, IA, contact person: Ms: Michele Belden, VP
Bank of America Des Moines, IA, contact person: Mr. Alan E. Gross, VP

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Directory (§26.25)

The Iowa DOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory prior to advertising for a letting, approximately 10 times per year. We make the Directory available with plans and proposals to every bidder. Copies are also available in Iowa DOT headquarters at the Office of Contracts 800 Lincoln Way Ames, IA and on the Internet through Bid Express.

Over Concentration (§26.33)

The Iowa DOT has not identified any over concentration. If the Iowa DOT determines that DBE firms are so "over concentrated" in a particular type of work as to "unduly" burden the opportunity of non-DBE firms who participate in this type of work, the Iowa DOT will devise appropriate measures to address the over concentration. The measures may include not counting contract goals for a particular DBE or DBE firms in general. It may also include the use of incentives, technical assistance, business development programs, mentor/protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field. The Iowa DOT will obtain the approval of the concerned DOT operating administration for its determination of over concentration and the measures it intends to devise to address it.

Business Development Programs (§26.35)

See Attachment A, Emerging Small Business Program and Attachment B, Supportive Services.

Required Contract Clauses (§26.13, 26.29)

Contract Assurance (§26.13)

The Iowa DOT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29)

The Iowa DOT will include the following clause in every construction contract:

PROMPT PAYMENT OF PRIME AND SUBCONTRACTORS

If the work extends over a period of more than one month, the Contractor will receive progress estimate payments based on the amount of work completed in an acceptable manner. These progress payments will be processed on at least a monthly basis. For primary and secondary projects, these progress payments will be bi-weekly if requested by the contractor. The Contracting Authority will pay interest at a rate of 1.0% a month, or a minimum of 250 dollars which ever is the greater amount on any work completed and accepted or should have been accepted, but not paid for within 14 days after the contractor should have been paid.

On contracts for which the contract sum is \$10,000 or more, payments for stock piled materials may be allowed. Payment will be based on 100% of value of processed or fabricated materials or rolled steel products which have been delivered to the project site or 90% of value of processed or fabricated material or rolled steel products reserved for the project and stored elsewhere where there is routine inspection by the Department personnel. The material shall be of acceptable quality and properly stored manner of storage.

Two Party checks may be used for cost of materials. To receive credit for goal, a DBE contractor must obtain quotes for the materials, arrange for the delivery of the materials, receive the two party check from the prime, and pass it on to the materials supplier. The prime contractor will not be allowed to reduce the amount paid to the DBE contractor by the cost of materials and pay the materials supplier directly. The use of two party checks for cost of materials does not require prior approval by Iowa DOT.

The Project Engineer's estimates will result in partial payments on the contract sum, and the allowance of a monthly payment by the Contracting Authority does not constitute final acceptance of the work upon which the payments are based.

The Project Engineer will certify that each payment is just and unpaid. The Contractor shall sign the final voucher certifying the quantities are just and unpaid.

The Iowa DOT requires all prime contractors to pay all subcontractors for satisfactory performance of their contracts no later than seven days from the date the prime contractor received payment or should have received payment when the reason for non-payment is not subcontractor's fault.

The Iowa DOT also requires the prompt return of all retainage held on all bonded subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Non-bonded subcontractors may be required to submit proof of payment for all material bills and wages to the prime contractor before the prime contractor is required to pay the retainage.

Monitoring and Enforcement Mechanisms (§26.37)

We will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Overall Goals (§26.45)

Amount of goal

The Iowa DOT's overall goal for FY 2000 is the following: 10 % of the Federal financial assistance we will expend in DOT-assisted contracts.

Annual DBE Goal Analysis

49 CRF Part 26.45 requires each state DOT to establish a DBE goal based on evidence of availability of ready, willing, and able DBEs relative to all business ready, willing and able to participate in the state's US DOT assisted contracts. The first step to begin the goal setting process is determining a base figure for the relative availability of DBEs. The second step is to examine the evidence available in the state to determine what adjustment, if any is necessary to the base figure to arrive at an overall goal.

Step 1 (Ready, Willing, and Able to Work Step)

The Iowa DOT looked at two methods to determine the percentage of the contracting population which are DBE firms that are ready, willing, and able to perform highway construction work in Iowa.

In the first method, an assumption that all minority and female construction firms that meet the DBE eligibility requirements and are interested in participating in the Iowa highway construction industry are in the Iowa DOT DBE Directory. The assumption also was made that all firms who are interested in participation in the Iowa DOT highway construction industry have received at least one contract or subcontract during the last three years.

In the second method, it is assumed some DBE firms become certified by the Iowa DOT have little interest in performing work in Iowa. Therefore in this method, only DBE firms who have received at least one contract or subcontract during the last three years are considered. In this

method, a percentage was computed for calendar years 1996, 1997, 1998, and the combined period 1996-98.

In the third method, we looked at capacity of DBE to perform the work. There are no DBE firms pre-qualified, other than DBE structures contractors, to perform contracts that exceed one millions dollars. Therefore the only opportunity for DBE firms to work on these contracts would be to work as subcontractors, manufacturers, suppliers, or truckers. Our Standard Specifications require the prime to perform at least 50% of these contracts; therefore the remaining 50% is available for DBE subcontractors. In this method we computed the percentage of work in proportion to the work they are capable to perform.

Step 2 (Adjustment Step based on evidence available)

The second step is to examine the evidence available in each state to determine if any adjustment is needed.

Three factors were examined to determine the capacity of the existing DBE firms working for the Iowa DOT.

1. The percentage of contracts that DBE firms were able to receive race neutral, (e.g. low bid or used as subcontractors on projects without DBE goals) was reviewed.
 - The percentage of prime contracts award to DBEs should represent their ability to complete and obtain prime contracts in a race neutral market.
 - During the past three (3) years, DBE firms have been obtaining 5.9% of the prime contractors through the low-bid process, which represent 2.1% of the total contract dollars.
2. The percentage subcontracts that DBE firms were historically able to obtain.
 - During the past thee (3) years, DBE firms have received 26.4% of all subcontracts (including both federal and non-federal aid subcontracts), which represent 5.6% of the total contract dollars.
3. The percentage *of the dollars that DBE have of all the work we let*.
 - During the past three (3) years, DBE firms have received 7.7% of the entire contract dollars (including both federal and non-federal aid contracts). However, the new Federal DBE Regulations will not allow the Iowa DOT to count all of the dollars we currently credit towards the DBE goal. The adjusted percentage is 7.2% using the new regulations.

- This percentage of dollars subcontracted to DBEs on Federal aid contracts in the past is abnormally high, since many of these contracts contained a DBE Goal which bidders were attempting to achieve. However, the percentage of dollars subcontracted to DBEs on non-Federal aid contracts in the past is abnormally low because the work capacity of DBEs is concentrated on the Federal aid contracts. Combining the two may give some overall indication of the capacity of the DBE firms.

Summary

These factors indicate that DBE firms have been able to obtain 2.1% of the prime contracts through race-neutral methods. With the current DBE goals set on federal aid projects, DBE firms have been able to obtain 7.2% (adjusted to the new counting methods) of our total highway contract dollars, including both federal aid and non-federal aid work. The percentage of highway DBE firms are certified to perform highway work is 8.9% of all of the firms who have obtained highway work, however their availability is adjusted to 5.8% based on the capacity limitation of the DBE firms prime contracts over one million dollars.

Using this methodology, the Iowa DOT would have established a **FY2000 Goal of 7.5%** for participation by DBE firms on all highway contracts let through the Iowa DOT (both federal aid and non-federal aid). While this would have resulted in a lower percentage on federal aid projects, it would have provide a higher total dollar volume going to DBE firms on all projects let by the Iowa DOT than what is currently going to DBE firms. (DBE Availability and Usage methodology and results are shown in Attachment D.)

However, the Iowa DOT does not plan to implement their new DBE Program until July 1, 2000. DBE project goals will be set under the current DBE Program and contractors will not be allowed to shift DBE commitments to non-federal aid projects. Therefore, the Iowa DOT has established a FY2000 DBE Goal of 10.0%, and postpone using the new annual goal setting methodology until FY2001 goals are set. We project that 1/3 of the FY2000 goal will be achieved through race-neutral measures. The remaining 2/3 of the goal will be achieved through race-conscious measures (DBE goals set on contracts).

Process

Iowa DOT will submit its overall goal to DOT on August 1 of each year.

Each year the overall goal will be determined and published in the Des Moines Register. The publication will notify the public that the proposed overall goal and its rationale are available for inspection during normal business hours at the Office of Contracts, Iowa DOT for 30 days following the date of the notice. The public will be informed that The Iowa DOT and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses and where the proposal may be reviewed.

The Iowa DOT address for viewing and comments is:
External Civil Rights Section
Office of Contracts, Iowa DOT
800 Lincoln Way,
Ames, Iowa 50010
and website, www.state.ia.us/government/dot

DOT address for comments:
FHWA
105 Sixth Street
Ames, Iowa 50010

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT.

Race-neutral measures

The Iowa DOT will use race-neutral measures to meet the maximum feasible portion of the overall goal. Race neutral measures will include outreach and technical assistance for DBE contractors and Emerging Small Business contractors (Attachment A) and an Annual Good Faith Effort Program (Attachment E).

The outreach and technical assistance support will include technical assistance and training in areas such as preparing and using a business plan, bonding, banking, working with the Iowa DOT, and contract administration. This will be offered to both DBE Contractors and Emerging Small Business Contractors.

The Annual Good Faith Effort Program will allow prime contractors to use DBE subcontractors on less complex projects and receive credit for helping DBE contractors to become viable companies within the contracting industry. Through the Annual GFE Program, the Iowa DOT will encourage contractors to work with new DBE contractors and to use them in areas of underutilized work types.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE prime contracts; DBE subcontracts on a prime contract that does not carry a DBE goal; DBE subcontracting exceeding a contract goal; and DBE subcontracting where the prime contractor did not consider a firm's DBE status in making the award.

Race-conscious measures

The Iowa DOT will use contract goals to achieve the amount of the overall goal that can not be achieved through race-neutral measures. This will be monitored and adjusted to assure that DBE usage does not fall short of the overall goal. The IDOT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Goals will not be established on every proposal and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). Contract goals will be set using the procedure described in Attachment F.

The Iowa DOT will express our contract goals as a percentage of the total amount of a DOT-assisted contracts.

Contract Goals

Information to be submitted

The Iowa DOT treats bidders' compliance with good faith effort requirements as a matter of responsiveness.

Each proposal for which a contract goal has been established will require all bidders, not currently enrolled in the Annual Good Faith Effort Program (Attachment E), to submit the following information on the Disadvantage Business Enterprise Information Statement of DBE Commitment Form (102115 form) with their bid.

- The names of DBE firms that will participate in the contract,
- The dollar amount of the participation of each DBE firm

Demonstration of good faith efforts

The successful bidder shall be selected on the basis of having submitted the lowest responsive bid. The obligation of the bidder is to make good faith effort. The bidder can demonstrate that it has done so by the following.

- Participating in the Annual Good Faith Effort Program,
- Meeting the contract goal,
- Meeting the calculated percentage for good faith effort based on bidder commitments received for the proposal (Attachment G), or
- Documenting good faith efforts for administrative reconsideration

The following personnel are responsible for determining whether a bidder who is not participating in the Annual Good Faith Effort Program and has not met the contract goal meets the calculated percentage for good faith effort: Estimating Section, Office of Contracts.

We will ensure that all information is complete and accurate and adequately documents the bidder good faith efforts before we commit to the performance of the contract by the bidder.

Administrative reconsideration

Within 48 hours of the advertised latest time for submitting bids, a bidder may request administrative reconsideration. The Bidder should make this request in writing to the following reconsideration team

Roger Bierbaum, Contracts Engineer, E-mail roger.bierbaum@cloverleaf.net
Ron Otto, Civil Rights Administrator, E-mail rotto@max.state.ia.us
Vicki Dumdei, Assistant Contracts Engineer, E-mail vdumdei@max.state.ia.us
Iowa DOT, Office of Contracts
800 Lincoln Way
Ames, Iowa 50010,
Phone number (515) 239-1414
Fax number (515) 239-1325

Since the first determination of good faith effort is a comparison of the Bidder's DBE commitment to the established goal and second determination for good faith effort is a calculated value, the reconsideration officials play no role in the original determinations.

A bidder will **NOT** be allowed to adjust the amount of their commitment after final time specified in the advertisement for receiving proposals

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or arguments concerning the issue of whether they made adequate good faith efforts to meet the goal. The bidder will have the opportunity to meet in person with our reconsideration officials to discuss the issue of whether they made adequate good faith efforts to do. We will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

Documentation required will include the following:

- Offering assistance in areas of interpreting plans, preparing proposals
- Response to requests from any small businesses submitting quotes, concerning quantities, overtime, project scheduling, etc.
- The bidder's past good faith efforts on other projects bid with the Iowa DOT
- Making portions of the work available for DBE subcontracting
- Evidence of negotiations with DBE firms
- DBE quotes obtained and non-DBE quotes used
- Reason agreements were not reached
- Follow-up after initial solicitations
- Efforts to assist in obtaining bonding, lines of credit, or insurance
- Efforts to assist in obtaining equipment, supplies, and materials

The result of the reconsideration process is not administratively appealable to the Department of Transportation

Good Faith Efforts when a DBE is replaced on a contract

The Iowa DOT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the Project Engineer immediately of the DBE's inability or unwillingness to perform and to provide reasonable documentation. The project Engineer will then notify the Civil Rights Administrator in the Office of Contracts for approval of any substitution.

In this situation, we will require the prime contractor to provide copies of new or amended subcontracts requests and documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the contractor will be penalized dollar for dollar for any work that was committed to the DBE and performed by others.

Counting DBE Participation (§26.55)

DBE credit will be counted only for work performed by the DBE firm.

DBE Manufacturer

Count 100 percent of the value paid for materials furnished which become permanent parts of the project. A manufacturer is a firm that owns and operates the facilities to produce a product required by the contract and purchased by the contractor.

DBE Supplier

Count 60 percent of the value paid for materials furnished which become permanent parts of the project. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store. A DBE supplier must earn 20% of its annual gross from non-DBE goal sales to demonstrate it sells goods to the general public.

DBE Broker

Count 100 percent of the fee or commission received by the DBE for the materials purchased and resold to the contractor which become a permanent part of the project. A broker does not manufacture or supply on a regular basis.

DBE Trucker

To count 100 percent of the amount paid to the DBE trucker they must have least one fully licensed, insured, and operational truck used on the contract. Trucking must be performed by the DBE, with employees of the DBE, using equipment owned or long-term leased by the DBE. The DBE may also lease trucks from another DBE firm, including an owner operator who is a certified DBE.

The DBE may also lease trucks from a non-DBE firm, including an owner operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease agreement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

The DBE must be responsible for management and supervision of the entire trucking operation. The subcontract must not be a contrived arrangement to meet the DBE goal. The DBE will be considered a broker, and only commissions received will count toward the goal, if the DBE is not in full control or does not have any DBE employees or trucks on the job.

In order for a DBE trucker to be credited with the delivered price of materials/supplies, the DBE trucker must also be certified as a supplier or manufacturer of the material, be responsible for the quality standards of the material, and negotiate the material price and select the source.

DBE Contractor

Count 100 percent of the amount of paid to a DBE contractor for labor and materials provided to perform a defined and clearly measurable portion of the contract. The work must be performed by the DBE's own employees and the DBE must order and pay for all supplies and materials.

Commercially Useful Function (§26.55)

One of the key requirements of the DBE Program is that a commercially useful function be performed. A DBE performs a commercially useful function when they are responsible for the execution of the work or a distinct element of the work by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering, installing (where applicable), and paying for the material itself.

This requirement is monitored by Iowa DOT field personnel who are assigned to the project and by staff from the Office of Contracts. Iowa DOT personnel look at who supervises the employees, who pays the employees, and who owns the equipment used by the DBE Contractors. DBEs and all employees are required to cooperate with Iowa DOT personnel conducting the field audits.

Failure of a DBE to perform a commercially useful function will result in that work not being counted toward the prime contractor's DBE goal. In certain cases it could result in Iowa DOT not paying the prime contractor for the work or it could lead to removal of eligibility of the DBE. In cases of deliberate fraud, it could lead to criminal prosecution of both the prime contractor and the DBE.

Situations that are indicative of a problem are:

- shared employees,
- supervision of the DBE crew by another contractor,
- use of the prime contractor's equipment,
- use of other non-owned equipment by the DBE without a lease,
- materials order for the DBE and/or paid by the prime contractor, or
- an item of work being done jointly by the DBE and another contractor.

Management

The DBE must manage the work that has been contracted. Management includes scheduling work operations, ordering equipment and materials, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with the DBE's own workforce.

The DBE owner must supervise daily operations either personally or with a full time, skilled and knowledgeable superintendent. The superintendent must be under the DBE's direct supervision. The DBE owner must make all operational and managerial decisions of the firm.

Materials

The DBE shall negotiate the cost, arrange delivery and pay for the materials and supplies for the job. Iowa DOT will review invoices to see they are billed and paid by the DBE. The DBE must determine the quantity of the material and be responsible for the quality of the material.

No credit toward the DBE goal will be given to the cost of materials or supplies paid directly by the prime for the DBE.

Employees

To be considered independent businesses, DBEs should keep a regular workforce. DBEs should not "share" employees with non-DBE contractors, especially the prime contractor.

We will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

Construction Monitoring

The department will monitor and document activities and work done by DBE's on all projects to ensure they perform all work as contracted at the time of award. Information documented on forms 102115 "Disadvantaged Business Enterprise Information Statement of DBE Commitments" and 102117 "Disadvantaged Business Enterprise Information DBE Project Statement" shall apply. Any concerns will be reported to the project engineer and prime contractor immediately.

The project engineer will be responsible for comparing dollar amounts actually paid to DBE subcontractors at the successful completion of their work and the amount committed at time of award. Discrepancies under that amount will require justification by the project engineer (item under runs, item deletions, etc.). Otherwise prime contractors can be penalized dollar for dollar the difference. Repeated violations can result in suspension of their bidding privileges.

Request to Subcontract

Subcontract Request Forms for all subcontractors will be submitted to the Office of Contracts along with the signed contract. A contractor may request up to a thirty (30) day extension. If unforeseen field conditions require additional or a termination of subcontractors an amended or new Subcontract Request Form will be required.

If a DBE subcontractor is terminated for reasons due to an inability or unwillingness to perform, the prime contractor must replace that subcontractor with another DBE or show sufficient documentation of good faith efforts to do so. On contracts with contract goals, the contractor must obtain permission from the Iowa DOT, Office of Contracts prior to substitution of any DBE designated on the DBE Commitment Form.

Usage of DBE contractors on all DOT projects is encouraged. Prime contractors subletting work to DBE's on projects with no goal or subletting work that goes above and beyond the established goal can only be viewed as a step in the right direction and toward the possible reduction or elimination of goals in the future.

Dispute Resolution

Disputes in highway construction usually involve a conflict between two or more parties about cost, delays, timeliness of performance etc. One increasingly used technique for resolution is Dispute Review Boards (DRB's).

A DRB is a pre-selected, project specific, neutral body. This could be a three-member panel whose experience in the work type is valued. All parties involved in the contract would select the DRB. Members of the panel would have to be respected by all parties and be impartial.

An important aspect of this technique is that it increases the chances for resolution at the project level. The DRB is not intended to replace any existing procedures but to supplement it with open-minded recommendations.

Prime Contractor Assisting DBE Firms

Construction assistance by prime contractors to a DBE subcontractor can be allowed if the situation is the result of an unforeseen emergency or natural disaster. The assistance would have to be short term (1 day or less) and only involve equipment, not workers, and only with the notification of the project engineer and the approval of Civil Rights Administrator in the Office Of Contracts.

Other forms of assistance, such as technical advice and occasional guidance, are encouraged with the notification of the Engineer and the approval of the Civil Rights Administrator.

Certification (§26.61 – §26.91)

The Iowa DOT will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions decision based on the facts as a whole.

Process

The DBE Certification Standards are found in Attachment H to this program. For information about the certification process or to apply for certification, firms should contact:

Ron Otto, Civil Rights Administrator
Iowa DOT, Office of Contracts
800 Lincoln Way
Ames, Iowa 50010,
Phone number (515) 239-1414
Fax number (515) 239-1325
e-mail rotto@max.state.ia.us

In the event we propose to remove a DBE's certification, we will follow procedures consistent with §26.87. Attachment H to this program sets forth these procedures in detail. To ensure separation of functions in a removal of certification, we have determined that DBE Appeal Committee will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the DBE Appeal Committee will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

If we deny a firm's application or decertify it, they may not reapply until 12 months have passed from our action.

Unified Certification Program (§26.81)

The Iowa DOT plans to contact other agencies in the state who have certified DBE Contractors in the past, FAA and FTA funding recipients, and officials from the larger city governments to explain our certification process and the dollar amount of our program. We will obtain input from them about how we can best serve their needs in the future. A written program will be developed and shared with any interested party.

Public meetings will be held to assure that we meet the needs of other governmental agencies, recipients of other DOT funding sources, and DBE Firms. This process will be completed and submitted to the FHWA Division Office on or before February 2002.

Certification Appeals (§26.85)

The Iowa DOT will continue to offer DBE Applicants who have been denied certification the opportunity to meet with the Iowa DOT DBE Appeal Committee. This committee is composed of five (5) DOT employees from outside of the Office of Contracts who understand the certification requirements and review the evidence provided to the Affirmative Action Officer, who made the initial determination. The Applicant is offered the opportunity to have a face to face meeting with the committee to present their side of the findings. No new evidence is reviewed in the appeal meeting. The proceedings are informal and the decision rendered can be appealed to the DOT.

Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

Recertifications

The Iowa DOT has been reviewing the eligibility of DBEs that were certified under former 49 CFR part 23, to make sure that they meet the standards of Subpart D of part 26. We will complete this review by October 1, 1999.

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility every three years. These reviews will include the following components: filling out a new application conducting an on-site review.

“No Change” Affidavits and Notices of Change

We require all DBEs to inform us, in a written affidavit, of any change of circumstances that affects its ability to meet the size, disadvantaged status, ownership, or control criteria of 49 CFR part 26. We will also require the DBE Firm to notify us of any material changes in the information provided with DBE’s application for certification.

We also require all owners of all DBE firms we have certified to submit on the anniversary date of their certification a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the Iowa DOT under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with the affidavit, documentation of the firm's size and gross receipts (Attachment I). We have notified all currently certified DBE firms of these obligations by mail. This notification informed DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he, she, or the firm fails to meet a part 26 eligibility requirement (e.g., personal net worth), they are obligated to submit a notice of change.

Personal Net Worth (PNW)

We will require all disadvantaged owners of applicant firms and have already required currently-certified DBEs to submit a statement of personal net worth.

Attachment J sets forth our personal net worth form 650193

Bidders List

The Iowa DOT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid DOT-assisted contracts. The purpose of this requirement is to allow the use of the bidders list approach to calculating overall goals. The information on the bidder's list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

The Iowa DOT currently records in our AASHTO Trns•port software all requests for plans, proposals, and bidding documents for each project which is being bid. Any contractor who submits a quote or a bid on a project would need these documents to prepare a quote or bid on the project. The Plan holders File in the Letting Award System (LAS) allows us to produce a list of any contractor who received the information needed to quote a project. The Eligible for Bidding Flag in the Plan holders File in LAS allows us to determine which contractors were approved to bid the project as a prime.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Iowa DOT or Federal Highway Administration. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to DOT

The Iowa DOT will have a three phase approach to measuring and ensuring that the DBE participation on federal aid projects.

1. The Iowa DOT will determine it's DBE annual achievements at the end of each federal fiscal year based on DBE contract and subcontract awards. The calculation will be based on total contract amount of any contract that contains a federal aid project that was let during that fiscal year.

Iowa Code, Section 307.49 requires all contractors to submit the names of all subcontractors they plan to utilize within 48 hours of the award of the contract. The Iowa DOT plans to utilize this code requirement to require all contractors to submit their proposed subcontractor usage information at the award of the contract. This data will be used to determine the proposed DBE usage prior to the work beginning on a contract. The DBE usage will be based on contracts and subcontracts DBE firms awarded during the fiscal year. The Iowa DOT will also use this data to maintain running commitments to DBE firms so projects goals may be adjusted based on commitments to date.

Contractors will be allowed to request up a 30 day extension for submittal of subcontract information.

2. The Iowa DOT is currently implementing electronic contract administration software (AASHTO's Trns•port CAS and Site Manager) which will collect as-placed quantities on a daily basis. The Iowa DOT will use ad hoc computer programs run against these contract administration software systems to monitor the status DBE work in progress on active projects.

However, third-party recipients do not use our contract administration software systems will be required to submit quarterly summaries of the DBE activities on federal-aid contracts they administer.

3. The Iowa DOT will continue to require the submittal of Form 112116, "Certification of Actual Dollars Paid to DBE Firms" by each prime contractor on federal aid project at the completion of the contract. This form will be used to verify accuracy of subcontract information that was submitted at the beginning of the project and determine the accuracy of using contract and subcontract awards as a basis for computing the DBE achievements.

We will report DBE participation to DOT on a quarterly basis, using DOT Form 4630.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted by a DBE applicant to a third party (other than DOT) without the written consent of the submitter.

EMERGING SMALL BUSINESS (ESB) PROGRAM

General Provisions

Purpose

The general purpose of the rules is to implement an Emerging, Small Business (ESB) Program for certain Iowa road construction businesses. The ESB Program authorized by the rules is intended to provide assistance to eligible small businesses, which could not otherwise participate successfully in the competitive process for award of Iowa DOT contracts for construction work, to enable such businesses to gain the knowledge, experience and resources needed to participate on their own in the competitive process for such contracts, thereby increasing competition and lowering the cost to the public for such work.

The rules establish criteria and other requirements that a business must meet to qualify as an ESB and to participate in the ESB Program.

Applicability

The rules determine the approval, denial, suspension and revocation of eligibility for ESB status.

Iowa DOT will provide certain development assistance tools to increase the opportunity for participation in designated Iowa DOT construction projects by all ESBs that meet the criteria and requirements. Development assistance available to ESBs will be provided through the Iowa DOT Supportive Services Program for DBE and ESB contractors.

Definitions

The following definitions shall apply to terms used in The Rules.

1. **Small Business:** Any enterprise which is located in the state of Iowa, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than three million dollars computed as the average of the three preceding fiscal years.
2. **Affiliate:** Businesses are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both, but they are not affiliates if the combined gross income of all related businesses does not exceed the total gross income limitations for a small business. Indications of control include, but are not limited to: interlocking management, or ownership, identity of interests among family members, shared facilities and equipment, common use of employees; or a business entity organized following the graduation, suspension, debarment or voluntary exclusion of a person which has the same or similar management, ownership, or principal employees as the graduated business or the suspended, debarred, or voluntarily excluded person.

3. Bid: The offer of a contractor, on the prescribed bid proposal form, to perform the work and to furnish the labor and materials in conformance with the invitation for bids at the prices quoted.
4. Business: A sole proprietorship, partnership, corporation, or any other legal entity authorized by law to perform construction work on Iowa DOT projects in Iowa. For the purposes of the eligibility requirement contained in Chapter 3(II)(2)(f) of the Rules, the term "business" shall also be construed to mean any principal of the business.
5. Business Development Plan: A plan developed by an ESB with the assistance and approval of the Iowa DOT ESB Administrator. This plan will identify specific training that the ESB must complete during the time period identified in the plan in order to develop the necessary skills and resources to obtain and perform work on projects.
6. Iowa DOT: The Iowa Department of Transportation.
7. Construction: Building, altering, repairing, improving, or demolishing work as described in an Iowa DOT project.
8. Contractor: Any individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to contract with, Iowa DOT for performance of prescribed work.
9. Controlling Interest: Ownership of 51 percent or more of the business by one person, or ownership of the largest single portion of the business by one person if no one person holds 51 percent or more.
10. Eligibility determination: The process of review by the Iowa DOT ESB Administrator of a business' qualifications to determine whether the business is eligible for the ESB Program.
11. Emerging Small Business (ESB): A business that Iowa DOT has determined meets the eligibility criteria and requirements of The Rules.
12. Independent business: A business that is not an affiliate any other business.
13. Principal: A sole proprietor, a general or limited partner, a person who owns 25 percent or more or a controlling interest, a director, or an officer of the business.
14. Supportive Services: Development assistance tools described in the Iowa DOT Support Services Program for DBE and ESB contractors.

Eligibility Determination

Application Requirements

A business that desires to take part in the ESB Program must file an application for eligibility determination with Iowa DOT. The business must submit a complete application to Iowa DOT not less, than 60 calendar days prior to the date the business desires to participate in the ESB Program.

The business must obtain the application forms and a copy of The Rules from Iowa DOT. The business must complete and, if necessary, supplement the application forms to provide all information necessary for Iowa DOT to determine whether the business is eligible for the ESB Program.

The applicant shall provide the following information in the application:

1. The name, telephone number, address, and legal status (sole proprietorship, partnership, corporation, etc.) of the business seeking ESB eligibility.
2. The name, address, and telephone number of the registered agent of the business, if the business is a corporation.
3. The names, addresses, and telephone numbers of all principals of the business, and a listing of other businesses in which such persons have been or are currently principals.
4. The names, addresses, and telephone numbers of all persons or legal entities which own any interest in the business and affiliates and subsidiaries of the business, if any, and the percentage of ownership held by each.
5. A notarized document, signed by the owner or manager of the business, which reports the gross income for the business for the previous three years, if the business has been in existence for that period. If the business has not been in existence for the previous three years, then a document indicating the total gross income of the business for that period. If the business is a new business with no income earned to date, it must so certify on the form provided by Iowa DOT for that purpose.
6. A statement as to whether any principal or owner of the business has either been debarred or convicted of bid related crimes or violations within the past six years in any state or federal jurisdiction, or is under notice of intent to debar in any jurisdiction, and the current status of any such principal or owner and debarment.
7. A statement in which the business identifies all of its current resources, experience, education, training, capability, managerial skills, and the qualifications of its personnel;

8. A statement in which the business identifies:
 - a. specific areas where it needs assistance, including but not limited to work performance, contract skills, resources, and experience; and
 - b. specific development assistance tools authorized by The Rules which can provide help to the business in successfully obtaining and performing work on Iowa DOT construction projects.

Eligibility Determination Procedure

The following procedure shall govern Iowa DOT approval or denial of ESB eligibility:

1. The business shall submit the application and supporting information to the Iowa DOT ESB Administrator. The business shall answer any questions the Iowa DOT ESB Administrator may have concerning the application information. The business shall provide all additional information requested by Iowa DOT as soon as possible. The ESB application will not be considered complete until all questions of the Iowa DOT ESB Administrator relative to the application have been answered to the satisfaction of Iowa DOT. The business shall have one year from the date of the initial application to provide the additional information needed to complete the application. Iowa DOT will not be required to take any action concerning an incomplete application.
2. Iowa DOT will approve or deny an initial or renewal application for ESB eligibility status based upon all the terms and conditions of The Rules, including the following criteria:
 - a. The business must be an independent business.
 - b. The business must meet the definition of a small business.
 - c. The business, and all principals or owners must not be an affiliate of any other highway construction business.
 - d. Eligibility is limited to businesses performing construction work. Suppliers, manufacturers, truckers, consultants, and brokers are not eligible.
 - e. The business must not have made false, deceptive, or fraudulent statements in the application for ESB eligibility or in any other information, statements, or documents submitted to Iowa DOT.
 - f. The business must not have been in the ESB Program for longer than a maximum five calendar year period. The five year eligibility period shall commence with the date of Iowa DOT approval of the initial application of the business to enter the program and shall terminate five consecutive calendar years from that date, regardless of the then current eligibility status of the business.

- g. The business must commit in writing to complete the Business Development Plan and participate in the Supportive Services Program.
 - h. The business, or any principal or owner of the business, must not have been debarred or convicted of bid-related crimes or violations within the past six years in any state or federal jurisdiction, or be under notice of intent to debar in any jurisdiction.
- 3. The Iowa DOT ESB Administrator shall give written notice of approval or denial of a completed ESB application, including renewals, promptly after receipt of such application.
 - 4. If Iowa DOT approves an application, the term of ESB eligibility shall be for a period of one calendar year from the date of approval. ESB eligibility may be renewed for additional one-year terms, up to the maximum of five consecutive years from the date of initial Iowa DOT approval of an application for ESB status, subject to the requirements of The Rules.

ELIGIBILITY MAINTENANCE

After Iowa DOT has approved an initial application for ESB status, the ESB must submit a separate application for renewal of ESB status on an annual basis to maintain eligibility. The renewal application must comply with these requirements, and must be submitted to the Iowa DOT ESB Administrator not later than 60 calendar days prior to the expiration of the ESB's annual eligibility period. The application for renewal shall also contain:

- 1. A form, provided by Iowa DOT, describing completion of the previous year's Business Development Plan.
- 2. A commitment in writing to complete a new Business Development Plan in the renewal year.

Termination of ESB Status

ESB status shall be terminated by:

- 1. The ESB exceeding the annual gross income limitation of a small business.
- 2. The passage of five consecutive calendar years since initial ESB determination, as defined.
- 3. The ESB's failure to meet all requirements and criteria of The Rules, as determined by Iowa DOT.

Iowa DOT may review the ESB eligibility status of a business at any time. If the ESB status of a business is terminated, the business may reapply for ESB eligibility status for any remainder of the maximum five consecutive calendar year eligibility period, unless it exceeded the income limitation of a small business. No reinstatement of ESB eligibility will be permitted after termination for exceeding the income limitation.

Denials, Suspension, and Revocation

Denial of ESB Eligibility

Iowa DOT may deny an application for ESB eligibility if Iowa DOT determines that the applicant business does not meet all of the requirements and criteria of The Rules. Iowa DOT shall notify the business of its determination and the business may request a hearing concerning such denial.

Suspension or Revocation of ESB Eligibility

1. Iowa DOT may suspend or revoke ESB eligibility if the Iowa DOT ESB Administrator determines that:
 - a) The business is declared in default of or commits a willful violation of any Iowa DOT contract or subcontract.
 - b) The business has made false, deceptive or fraudulent statements on its application for ESB eligibility, or in any documents submitted on a Iowa DOT project including prequalification, or in any other information submitted to Iowa DOT, or in the course of any determination or hearing associated with ESB eligibility.
 - c. The business commits any action or omission which evidences a lack of business integrity or honesty in performing public projects.
 - d. The business does not meet all requirements and a criterion of The Rules at all times.

Length of Suspension or Revocation of ESB Eligibility and Reinstatement

If a business' ESB eligibility is denied, suspended, or revoked by Iowa DOT, such denial, suspension, or revocation will remain in place until the business submits new information which is determined by the Iowa DOT ESB Administrator to satisfactorily dispose of the grounds for denial, suspension, or revocation.

SUPPORTIVE SERVICE PROGRAMS OFFERED BY THE IOWA DOT

Iowa Department of Transportation (Iowa DOT) will provide supportive services to all certified Disadvantaged Business Enterprises (DBEs) and Emerging Small Businesses (ESBs). These services include but are not limited to:

1. Provide a toll free telephone number for DBEs and ESBs to call Iowa DOT for assistance.
2. Publish and mail a Weekly Letting Report, which list each project to be let the following month with project number, location, item quantities and the DBE goal (if applicable).
3. Provide in person or by mail free plans and proposals for all projects requested by each DBE and ESB.
4. Provide technical assistance and answers to questions about projects to be bid.
5. After award of contracts, provide by mail and/or telephone to each DBE utilized, a list of the DBE subcontractor commitments, to be signed and returned.
6. Verify that each and every DBE subcontract request form meets or exceeds the amount committed at the time of bid
7. Provide technical assistance during the construction phase of a project.
8. Provide free computer software (in the area of construction) on various business applications and technical support
9. Provide technical assistance to help DBEs and ESBs secure bonding and bank financing.
10. Provide workshops and seminars in locations throughout the state (including but not limited to:

Scott County Community College that have available 16 Small Business Centers throughout the state which include a nine (9) week, and an eleven (11) week Fast Track Training Course; and Des Moines Area Community Colleges) on plan reading, estimating, cost accounting, business plans, insurance, financing, equipment and other requested topics.

11. If necessary, provide referrals to U. S. DOT bond and loan programs, all SBA programs and services and local resources.
12. Provide information and technical assistance, including alternate dispute resolution, to DBEs and ESBs who are having a problem with a prime contractor or with Iowa DOT.
13. Provide a list of prime bidders on upcoming Iowa DOT projects.
14. Provide free of charge, one-on-one confidential business counseling and technical assistance to DBEs and ESBs through the Service Corps of Retired Executives Association (SCORE) in the areas of accounting, office management, computers and software, records keeping and forms, bonding and banking.

15. Provide free of charge, one on one confidential business counseling Provide field technical assistance to DBEs and ESBs through the use of Resident Construction Staff, Contracts Office Senior Engineering Technicians (External Civil Rights Section), and Retired Iowa DOT Construction Technicians.
16. Provide financial assistance totaling up to fifty percent (50%) of the initial cost of services for certified DBEs and ESBs requiring a Certified Public Accountant (CPA) to a reviewed Financial-Experience-Equipment Statement to become prequalified to bid as prime contractors on Iowa DOT projects.
17. Provide technical assistance and support to DBEs and ESBs through the use of a subcontracted business consultants. Services shall include but not be limited to: office visits, assistance in the letting room, site visits, seeking out new DBEs and ESBs to enter the program, and attending meetings with DBEs and ESBs, if requested.
18. Provide a plan reading room at the location of the lettings for DBEs and ESBs.
19. Provide the Construction Manual, Standard Specifications for Highway and Bridge Construction books (in English and/or Metric), and other construction materials and manuals at no cost to DBEs and ESBs.
20. Provide assistance, when requested by DBEs and ESBs, concerning prompt payment on projects let by Iowa DOT.
21. Participation by DBE firms in Iowa DOT's Expanded Supportive Services Programs will be optional and limited to the first five- (5) years in the program.
22. Participation by ESB firms in Iowa DOT's Expanded Supportive Services Program shall be limited to five (5) years. The first two- (2) years of participation shall be mandatory; the last three- (3) years shall be optional.
23. Provide on-site training to DBEs and ESBs regarding Iowa DOT's bidding and quoting process, and the processing of DOT paperwork.
24. Provide a list of prime contractors, retired construction technicians, and others approved by the Iowa DOT that are available for assignment to act as a "mentor" and/or contact person to advise DBEs and ESBs.
25. Provide self-study plan reading courses used by Iowa DOT inspectors at no cost to DBEs and ESBs.
26. Provide Business Management and Construction Scheduling Assistance to DBEs and ESBs at no cost.
27. Provide assistance to DBEs and ESBs in developing a Business Plan and acquiring training in Accounting Principals.
28. Provide financial assistance totaling up to fifty percent (50%) of the cost of securing bonding.

DBE Availability and Usage Based on computation of existing data (1996-1998)

Data used:

- 1996, 1997, 1998 Calendar year data based on data of contract letting
- Include subcontracts in date of letting, not award date of subcontract
- Include all contracts bid through the Office of Contracts, except for STP-U and STP-E (since we don't have subcontract data for these contracts)

<u>Measurement</u>	1996	1997	1998	1996-1998
STEP 1				
Availability #1	N.A.	N.A.	N.A.	8.6%
Availability #2	10.3%	11.5%	11.6%	8.9%
Availability #3 (considering capacity)	6.8%	7.5%	7.5%	5.8%
STEP 2				
Prime contracts	6.4%	4.2%	6.3%	5.9%
Subcontracts	27.0%	26.6%	25.7%	26.4%
Dollars by DBE Prime contracts	2.3%	1.9%	2.3%	2.1%
Dollars by DBE Subcontracts	5.5%	5.1%	6.3%	5.6%
Dollars by DBE Primes/subcontracts	7.8%	7.0%	8.6%	7.7%
Dollars by DBE (Adjusted for new regulations)	7.2%	6.5%	8.0%	7.2%

Availability #1 = (# DBE contracting firms in current DBE Directory) / (# All contracting firms in Trns•port database)

- *[This percentage will be an approximation of firms available and ready to work]*
- The number of DBE contracting firms in the July 2, 1999 DBE directory account for 8.6% of the construction firms who have performed work on highway contracts let by the Iowa DOT over the past three years.
- This does not included suppliers, *manufacturers*, and truckers

Availability #2 = (# DBE firms receiving prime or subcontracts) / (# All firms receiving prime or subcontracts).

- *[This calculation will give us the percentage of contractors participating in our work who are DBE firms].*
- During the past three (3) years, DBE firms represent 8.9% of the firms who have been active in receiving contracts. Therefore DBE firms have been more successful in receiving contracts than typical contractor.

- This does not include suppliers, manufacturers, and truckers

Availability #3 = (considering capacity)

- The new DBE regulations state that the Annual DBE Goal should be based on availability of DBE firms to perform the work. There are no DBE firms prequalified, other than DBE structures contractors, to perform contracts that exceed one million dollars. Therefore the only opportunity for DBE firms to work on these contracts would be to work as subcontractors. Our Standard Specifications require the prime to perform at least 50% of these contracts; therefore the remaining 50% is available for DBE subcontractors.

Prime Contracts = (# DBE prime contracts) / (# prime contracts awarded)

- *[e.g. Percentage of contracts that DBE firms were able to receive race neutral, (e.g. low bid)]*
- During the past three (3) years, DBE firms have been obtaining 5.9% of the prime contractors through the low-bid process.

Subcontracts = (# DBE subcontracts) / (# All subcontracts)

- *[e.g. Percentage of subcontracts that DBE firms were historically able to obtain]*
- During the past three (3) years, DBE firms have received 26.4% of all subcontracts (including both federal and non-federal aid subcontracts)
- This does not include suppliers, manufacturers, and truckers

Dollars = (\$ DBE prime and subcontracts) / (\$ prime contracts awarded)

- *[This is the percentage of the dollars that DBE have of all the work we let]*
- During the past three (3) years, DBE firms have received 2.1% of the prime contracts (by dollar volume), including both federal and non-federal aid contracts.
- During the past three (3) years, DBE firms have subcontracted 5.6% of the entire contract dollars (including both federal and non-federal aid contracts).
- During the past three (3) years, DBE firms have received 7.7% of the entire contract dollars (including both federal and non-federal aid contracts).

Dollars by DBEs (Adjusted for new DBE regulations)

- The current Iowa DOT DBE Supplemental Specifications allows a DBE Trucker to match up to 50% of their truckers with non-DBE trucks. The new DBE Regulations do not allow non-DBE truckers to count towards the DBE goal. We have made an assumption that non-DBE trucks did 25% percent of the DBE trucking during the past three-years.
- The current Iowa DOT policy is to count 100% of all DBE prime contractors towards our DBE goal. The new DBE regulations would exclude the portions of a DBE prime contract that is subcontracted to non-DBE subcontractors. We have made an assumption

that 25% of the past DBE prime contracts were subcontracted to non-DBE subcontractors.

Annual Good Faith Effort (GFE) Program

Entrance Requirements

As a result of recommendations from the DBE Implementation Group, the Iowa DOT is offering contractors an option to enter into an Annual Good Faith Effort (GFE) Program rather than meet contract goals. Contractors in the Annual GFE Program will be allowed to use DBE contractors on any job they are awarded from an Iowa DOT letting and get credit for their participation in the DBE program.

Since contract goals are placed on federal aide contracts with the highest opportunity for using DBE contractors, the highest goals are naturally placed on the largest and most complex projects. These projects are normally on a tight schedule and highly visible. Therefore, the DBE Implementation Group recognized the high pressure on these projects as a poor place to help struggling DBE firms develop and grow.

Participation in this program is voluntary.

For a contractor to be eligible for entrance into the Annual GFE Program they must meet the following conditions:

- Have a good DBE track record with the Iowa DOT on previous projects. This means that contractors with no track record cannot participate in the Program.
- Submit a plan for the how they intend to accomplish their affirmative action responsibilities for the construction season.
- Follow their plan and demonstrate compliance during the construction season. Contractors may be expelled from the program mid-year for lack of effort to achieve the goals in their plan.

Annual GFE Plan

Contractors will be required to turn in an Annual GFE Plan to the Office of Contracts along with their Financial-Equipment-Experience Statement. Their Plan must include the following:

- Percentage of work that the contractor will subcontract to DBE contractors.
- Number of DBE contractors that will be used to accomplish the work
- Percentage of work that will involve using DBE contractors in underutilized work types
- Contractor's plan, if any, to participate in Mentor-Protege (big brother, big sister) program
- Any other support areas that the contractor proposes to be involved in

Contractors will earn points for the various commitments in Annual GFE Plan. To be an acceptable Plan it must meet or exceed 7.5 points. Points will be assigned as follows:

- DBE Commitment
1 point for each percentage of their commitment
- DBE usage in underutilized work types
1 point for each percentage of DBE usage in underutilized work types
- Using DBE contractors who are also Emerging Small Business (ESB) Contractors
1 point for each percentage of work done of work committed to DBE contractors who are also ESB contractors
- Points for using multiple DBE firms

- $$(0.1)(\text{number of DBE contractors}) / (\text{total number of subcontractors used})$$
 • DBE assistance - 4 points maximum for DBE assistance
 - 4 points for taking part in formal mentor/protege program
 - 2.5 points for “big brother/sister”

Compliance

Contractors will be required to turn in Subcontract Request Forms with their signed contract. This will be used as a notification to the Iowa DOT of what work will be subcontracted to DBE contractors.

Contractor’s compliance will be based on their actual achievements. Compliance will be monitored throughout the year and Contractors who do not following their Annual GFE Plan may be ejected from the Program at midyear. Contractors who do not achieve their commitment and would like to be in the Annual GFE Program the next year, will be required to meet the 7.5 points plus 2 times the points they were deficient. Since this is a voluntary program there will be no monetary sanctions for non-compliance with the Annual GFE Plan

For a contractor who exceeds their commitment, they have the option to combine the first year’s achievement with the second year’s as an incentive for over achievement.

Setting Contract Goals

DBE Goal Setting Committee

Seven weeks prior to the letting a goal setting meeting is held. Those persons attending the goal setting may include the Civil Rights Administrator, the Proposal Engineers, the DBE Consultant, DBE contractors and members of the Associated General Contractors. Representatives from FHWA and Materials Suppliers may also attend.

This is an open meeting and anyone with an interest in the process or in a specific project is welcome to attend.

Criteria for Setting Project Goals

The following criteria are used as a guide in setting DBE goals.

- Set only on US DOT-assisted proposals.
- Try to attain the dollar amount of DBE usage represented by the overall goal on all contracts let by the Iowa DOT. The percentage of DBE accomplishments, tracked year-to-date from prime contracts awarded to DBE contractors and subcontract request forms, will be used to adjust the total amount of DBE goal set per letting. Contract goals will be set to make up the difference in the amount of DBE usage that can be obtained through race neutral means and the overall goal.
- Set the total dollar amount of the DBE goal on an individual proposal greater than \$10,000.
- Balance DBE goals work between industries such as structures, paving, asphalt, and grading.
- Balance DBE goals work between county, city, and state projects.
- Maintain a balance of DBE goal work across the state so all-geographical locations share in the DBE Program.
- Identify individual items that are normally subcontracted. Iowa DOT staff will share the approximate percentage of the overall contract estimate for the Committee to review.
- Consider availability of DBE contractors who are ready, willing, and able to quote the work available to subcontract.
- Assure at least 3 ways to make a DBE goal. This may be three or more items that can be subcontracted to DBE contractors to meet the goal or three or more DBE contractors ready, willing and able to quote on the available subcontract work. A goal should never be set on a proposal so that there is only one way available for bidders to meet that goal.
- Set DBE goals for individual proposals from 2.5% to 15%, in 2.5% increments.

Good Faith Effort Determination Based on Calculated Percentage of Bidder Commitments

Iowa DOT has established the following objective measurement of good faith effort (GFE). This will be applied to apparent low bids received on proposals with a contract goal where the DBE Commitment is less than the contract goal. Contractors who are participating in the Annual GFE Program do not have to meet Contract Goals nor will any value be included in the calculation for their bid.

The Calculated GFE shall be determined by taking 80% of the average of DBE commitments submitted by each bidder not participating in the Annual GFE Program. The contract goal percentage will be included in the calculation as if it is an additional bidder. Only that amount of a bidder's DBE goal attainment that does not exceed the established goal shall be used in the calculation. Responsiveness of the low apparent bidder will be determined by comparing the percent of DBE commitment of each bidder to the 80% of the average value. If the bidder's commitment is less than the 80% of the average value, they are non-responsive. If the bidder's commitment is greater than or equal to the 80% of the average value they are responsive for DBE commitment.

The Calculated GFE shall be determined by the following formula:

- G = Calculated GFE based on the percentage of bidder commitments, to the nearest tenth of a percent.
- C = DBE Commitment of each bidder expressed as a percentage of their Bid Total, to the nearest tenth of a percent. The contract goal percentage will be used if the bidder's commitment is greater than the contract goal.
- D = DBE Contract Goal
- n = Number of bidders (not currently in the Annual GFE Program)

$$G = \frac{0.80(\sum C_i + D)}{n+1}$$

If $C < G$, the bid is considered non-responsive due to DBE commitment

DBE CERTIFICATION STANDARDS

Burden of Proof

Each applicant firm has the burden of demonstrating to Iowa DOT by the preponderance of evidence that the firm is eligible for certification. Preponderance of evidence means the greater weight in the areas of group membership, ownership, control, and social and economic disadvantage.

Applicants who are members of a presumed group do not have to prove social disadvantage but must explain how they have been socially disadvantaged and sign a sworn affidavit attesting to this. The disadvantage must pertain to education, employment, business or access to capital or credit, based on race, sex, color or national origin. Applicants who are not members of a presumed group have the burden of proving to Iowa DOT by a preponderance of evidence that they are socially and economically disadvantaged.

Eligibility Standards

Group Membership (§26.63): Each applicant who is not readily identifiable as a group member must demonstrate by a preponderance of the evidence that he or she is a member of a presumed group. The applicant must be regarded as a group member by both group members and the general community. The group membership and recognition must be of long standing and not just for a short time before the application.

Business Size (§26.65): An applicant firm including all affiliates must meet SBA standards of 13 CFR Part 121 appropriate to the type of work the firm seeks to perform. In any federal fiscal year, if the firm and all affiliates have gross receipts over the firm's previous three fiscal years, in excess of \$16.6 million, the firm is not eligible to be a DBE. A congratulatory letter of completion will be sent to the firm.

Social Disadvantage (§26.67): Every applicant, who is readily identifiable, as a protected group member must submit a signed, notarized affidavit. The affidavit should describe how the person has been disadvantaged or discriminated against due to their race, sex, color or national origin. The disadvantage should pertain to access to education, capital, employment or business opportunities. Applicants who are not protected group members must provide proof of disadvantage.

Economic Disadvantage (§26.67): Each qualifying applicant must have personal net worth (PNW) of less than \$750,000, excluding the value of the primary residence and the value of their ownership in the applicant company. The PNW statement must have a signed, notarized affidavit swearing to the truth of the figures submitted. If the qualifying applicant's personal net worth exceeds \$750,000, the owner is no longer disadvantaged and the firm is not eligible to be a DBE. A congratulatory letter of completion will be sent to the firm.

Ownership (§26.69): To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. The ownership must be real, substantial and continuing. The contributions of capital or expertise to acquire ownership must be real and substantial.

Examples of unqualified contributions are:

1. A promise to contribute or an unsecured note.
2. A gift.
3. Un-renounced joint assets.
4. Transfers from non-disadvantaged individuals.

Examples of qualified contributions are:

1. A legal settlement, with court documents.
2. Inheritance after a death.
3. Legally transferred assets from a spouse, with court documents.
4. Personally held assets.

Control (§26.71): The socially and economically disadvantaged owners must possess the power to control daily operations and long-term destiny. The owner must hold the highest office, must control the board of directors or be the controlling partner. The disadvantaged owner must have technical competence and experience in the field of operations as well as managerial expertise. Office management, bookkeeping, or clerical expertise is not sufficient to demonstrate control. The owner cannot have other employment or businesses that conflict or require attention during normal business hours. For businesses where other family members are owners or employees, the disadvantaged owner must demonstrate clear control. A franchise is eligible so long as there is no affiliation, restrictions or common management.

Independence (§26.71): An independent business does not rely on another firm for personnel, facilities, equipment, capital or other resources. The firm cannot be dependent on a former non-disadvantaged owner. The firm cannot have exclusive or primary dealings with another firm or dealings outside normal industry practice.

Cooperation (§26.73): Every applicant and certified DBE firm shall cooperate fully with all Iowa DOT requests for information. Failure to do so in a timely manner is ground for denial or removal of eligibility.

DBE CERTIFICATION PROCEDURES

Iowa DOT Procedures

Objectives: Iowa DOT's commitment is to maximize contracting opportunities to bona fide DBE firms and DBE majority controlled joint venture firms. These must be small businesses owned and controlled by one or more socially and economically disadvantaged persons.

Definitions: A socially disadvantaged person is one who is a U. S. citizen or legal resident, has been subject to discrimination in education or business, has documented such discrimination and is:

1. Black American
2. Hispanic American
3. Native American
4. Asian-Pacific American
5. Subcontinent-Asian American
6. Woman
7. Others determined to be disadvantaged

An economically disadvantaged person is one who is a member of one of the above protected groups and who has a personal net worth of less than \$750,000.00 excluding the value of one personal residence and the value of the ownership in the applicant firm. See Appendix D of 49 CFR Part 26.

An eligible firm is an existing small business (in business over 1 year) at least 51% owned and controlled by one or more socially and economically disadvantaged persons.

Application: An applicant must complete Iowa DOT Form 650180, an eight page application and enclose all required documents on the checklist. All incoming applications are checked for completeness and compliance with business size and ownership. Complete applications will receive a decision letter within 90 calendar days. Incomplete applications may be returned.

Document review: Each complete application is assigned to an Iowa DOT DBE specialist for an in-depth review. The specialist will evaluate the operational and managerial control through corporation, partnership, and leasing documents review the financial statements, personal and business tax returns, verify proof of ownership, resume of experience and the firm's work experience.

On-site interview: An interview is scheduled with the owner(s) at the firm's office. The DBE specialist uses Iowa DOT's on-site review questionnaire and supplements it with areas of concern specific to the firm.

Job-site review: If the firm has any type of job in progress, the DBE specialist will visit the job site, interview employees, look at equipment and speak with other contractors or inspectors at the job site.

Evaluation: At the completion of the review, the DBE specialist will evaluate all information and conduct any final verification. The initial recommendation of the specialist is the first step in the team process. The file then goes to the certification team members. If there are any questions, uncertain issues, a denial, or removal of eligibility, the team meets to discuss and perhaps request further investigation. If all concur, a denial letter is sent. If necessary, the file may be returned to the specialist for further work.

Certification: When a firm is certified, they will be notified in writing, added to the DBE directory and mail list and be given an opportunity to request specific support services to meet their needs. All certifications are for 3 years. At the end of 3 years, the firm must again apply for certification.

Annual affidavit: Each year on an assigned date every certified DBE firm must submit a signed, sworn notarized statement that the firm meets the size standard and has no changes in ownership or control that would affect eligibility. The statement must be accompanied by supporting documentation, which may include personal tax return, personal financial statement, the company tax return and the company financial statement. Failure to do so by the assigned date will result in removal of eligibility for failure to cooperate.

Denials

When the application review team recommends denial of a new applicant, the applicant firm is notified in writing, sent certified mail. The letter explains the reason for denial and specifically references the evidence to support each reason for denial.

A denied firm may not reapply for a period of 12 months from the date of the denial letter. The firm may appeal in writing to Iowa DOT DBE Appeal Committee and if the denial is upheld by the Committee they applicant can appeal to the U. S. Department of Transportation.

Removal of Eligibility

Complaints: Iowa DOT will accept written complaints from any person alleging that a currently certified DBE firm is ineligible and stating specific reasons for ineligibility. Anonymous or general complaints will not be accepted. The Iowa DOT will thoroughly investigate the complaint and if reasonable cause is found, will notify the DBE and the complainant in writing.

Iowa DOT Initiated: When Iowa DOT has reason to believe a certified DBE firm is ineligible, the DBE will be notified of the finding in writing. The letter will state the reason and cite the evidence.

USDOT Initiated: The USDOT may notify Iowa DOT of reasonable cause to find a certified DBE firm to be ineligible. The Iowa DOT must immediately initiate removal procedures.

Hearing: When a DBE firm receives written notice of intent to remove eligibility, the firm has 10 days to request an informal hearing to refute the allegations. The Iowa DOT must prove by a preponderance of evidence that the firm is ineligible. The Iowa DOT will provide a Tape Recorder to record the hearing and prepare a transcript. The decision-maker for the appeal hearing will be the Iowa FHWA division staff person with DBE oversight responsibility.

Decision: The decision to remove eligibility will be based on circumstances that have changed since certification, evidence that was not available at certification, evidence that was concealed or misrepresented, a change in certification standards or a documentation of erroneous facts.

Notice of Decision: Following the decision, the Iowa DOT will notify the DBE firm of the decision and any consequences. The firm remains an eligible DBE throughout the investigation and hearing process. The removal of eligibility becomes effective on the date of the decision letter.

Effects: The prime contractor will receive DBE credit for all DBE work that is currently under contract. If there was a bid commitment but no written subcontract was executed yet, the prime contractor must make a good faith effort to find another DBE firm for all or part of the committed amount.

US DOT Appeals

Who May Appeal: Any applicant who has been denied certification by the Iowa DOT or a previously certified firm whose eligibility was removed by the Iowa DOT may appeal. Any complainant in an ineligibility complaint to the Iowa DOT may appeal if the Iowa DOT does not remove eligibility and they believe the finding to be in error.

Where: Send appeals to:

Department of Transportation
Office of Civil Rights
400 SW 7th ST Room 2401
Washington D. C. 20590

When: The complete appeal must be filed within 90 days of the decision letter date.

What: The appeal must contain a narrative as to why the Iowa DOT decision was in error and documents to show or prove the error. If you are an applicant who was denied or a DBE whose eligibility was removed, you must disclose in the appeal all other denials or rejections within one year of the date of the appeal. Failure to do so is a failure to cooperate.

Recipient: The Iowa DOT will provide to USDOT the administrative record and hearing transcript within 20 days.

Record Keeping Requirements

The Iowa Department of Transportation will provide inspection and supportive services on highway construction projects with DBE participation, part of this service is maintaining accurate records on the activities and progress of the project while also monitoring the quality of materials and workmanship being incorporated into the project. To insure prompt and accurate payment for work successfully completed, all project information is kept daily in the field book, this should include working day reports, item progress, payment vouchers, field test results, etc.